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An Act To Implement the Uniform Law Conference Suggested Updates to Article 1 of the Uniform Commercial Code

Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-1. 11 MRSA Art. 1, as amended, is repealed.

Sec. A-2. 11 MRSA Art. 1-A is enacted to read:

ARTICLE 1-A

General provisions

Sec. A-3. Legislative intent. This Act is the Maine enactment of the Uniform Commercial Code, Article 1 as revised by the National Conference of Commissioners on Uniform State Laws. The text of the uniform act has been changed to conform to Maine statutory conventions and the Article is enacted as Article 1-A. The changes are technical in nature and it is the intent of the Legislature that this Act be interpreted as substantively the same as the revised Article 1 of the uniform act.

Sec. A-4. Effective date. This Part takes effect January 1, 2010.

PART B

Sec. B-1. 10 MRSA §1286, as enacted by PL 1995, c. 462, Pt. A, §22 and affected by §23, is amended to read:

§ 1286. Usage of trade

The terms "utility" and "industrial," when used to refer to equipment, machinery, attachments, yard and garden equipment or repair parts, have the meanings commonly used and understood among dealers and suppliers of farm equipment as usage of trade in accordance with Title 11, section ~~1-205~~1-1303, subsection ~~2~~(3).

Sec. B-2. 10 MRSA §9403, sub-§2, ¶B, as enacted by PL 1999, c. 762, §2, is amended to read:

B. The Uniform Commercial Code other than Title 11, sections ~~1-107 and 1-206~~section 1-1306 and Articles 2 and ~~2A~~2-A.

Sec. B-3. 10 MRSA §9416, sub-§4, as enacted by PL 1999, c. 762, §2, is amended to read:

4. Holders. Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in Title 11, section ~~1-201~~1-1201, subsection (20)(21), of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under Title 11, section 3-1302, subsection (1); Title 11, section 7-501; or Title 11, section 9-308 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated or a purchaser, respectively. Delivery, possession and indorsement are not required to obtain or exercise any of the rights under this subsection.

Sec. B-4. 11 MRSA §2-103, sub-§(1), ¶(b) is repealed.

Sec. B-5. 11 MRSA §2-202, sub-§(1) is amended to read:

(1). By course of performance, course of dealing or usage of trade (section ~~1-205~~1-1303) ~~or by~~ course of performance (section 2-208); and

Sec. B-6. 11 MRSA §2-208 is repealed.

Sec. B-7. 11 MRSA §2-1103, sub-§(3), as amended by PL 1999, c. 699, Pt. B, §11 and affected by §28, is further amended to read:

(3). The following definitions in other Articles apply to this Article:

"Account." Section 9-1102, subsection (2).

"Between merchants." Section 2-104, subsection (3).

"Buyer." Section 2-103, subsection (1), paragraph (a).

"Chattel paper." Section 9-1102, subsection (11).

"Consumer goods." Section 9-1102, subsection (23).

"Document." Section 9-1102, subsection (30).

"Entrusting." Section 2-403, subsection (3).

"General intangible" Section 9-1102, subsection (42).

"Good faith." Section ~~2-103, subsection (1), paragraph (b).~~

"Instrument." Section 9-1102, subsection (47).

"Merchant." Section 2-104, subsection (1).

"Mortgage." Section 9-1102, subsection (55).

"Pursuant to commitment." Section 9-1102, subsection (60).

"Receipt." Section 2-103, subsection (1), paragraph (c).

"Sale." Section 2-106, subsection (1).

"Sale on approval." Section 2-326.

"Sale or return." Section 2-326.

"Seller." Section 2-103, subsection (1), paragraph (d).

Sec. B-8. 11 MRSA §2-1207, as enacted by PL 1991, c. 805, §4, is repealed.

Sec. B-9. 11 MRSA §2-1501, sub-§(4), as enacted by PL 1991, c. 805, §4, is amended to read:

(4). Except as otherwise provided in section ~~1-1061-1305~~, subsection (1), this Article or the lease agreement, the rights and remedies referred to in subsections (2) and (3) are cumulative.

Sec. B-10. 11 MRSA §2-1518, sub-§(2), as enacted by PL 1991, c. 805, §4, is amended to read:

(2). Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2-1504) or otherwise determined pursuant to agreement of the parties (section ~~1-102, subsection (3)~~1-1302 and section 2-1503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages:

(a). The present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement; and

(b). Any incidental or consequential damages minus expenses saved in consequence of the lessor's default.

Sec. B-11. 11 MRSA §2-1519, sub-§(1), as enacted by PL 1991, c. 805, §4, is amended to read:

(1). Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2-1504), or otherwise determined pursuant to agreement of the parties (section ~~1-102, subsection (3)~~1-1302 and section 2-1503) if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under section 2-1518, subsection (2) or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages minus expenses saved in consequence of the lessor's default.

Sec. B-12. 11 MRSA §2-1527, sub-§(2), as enacted by PL 1991, c. 805, §4, is amended to read:

(2). Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2-1504) or otherwise determined pursuant to agreement of the parties (section ~~1-102, subsection (3)~~1-1302 and section 2-1503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages:

- (a). Accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement;
- (b). The present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term comparable to the then remaining term of the original lease agreement; and
- (c). Any incidental damages allowed under section 2-1530 minus expenses saved in consequence of the lessee's default.

Sec. B-13. 11 MRSA §2-1528, as enacted by PL 1991, c. 805, §4, is amended to read:

§ 2-1528. Lessor's damages for nonacceptance, failure to pay, repudiation or other default

(1). Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2-1504) or otherwise determined pursuant to agreement of the parties, (~~section 1-102, subsection (3) 1-1302~~ and section 2-1503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under section 2-1527, subsection (2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in section 2-1523, subsection (1) or section 2-1523, subsection (3), paragraph (a), or, if agreed, for other default of the lessee:

- (a). Accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor;
- (b). The present value as of the date determined under this subsection of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term; and
- (c). Any incidental damages allowed under section 2-1530 minus expenses saved in consequence of the lessee's default.

(2). If the measure of damages provided in subsection (1) is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee together with any incidental damages allowed under section 2-1530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

Sec. B-14. 11 MRSA §3-1103, sub-§(1), ¶(d), as enacted by PL 1993, c. 293, Pt. A, §2, is repealed.

Sec. B-15. 11 MRSA §3-1103, sub-§(1), ¶(j), as enacted by PL 1993, c. 293, Pt. A, §2, is amended to read:

(j). "Prove" with respect to a fact means to meet the burden of establishing the fact (section ~~1-201~~1-1201, subsection (8)).

Sec. B-16. 11 MRSA §4-104, sub-§(3), as amended by PL 2003, c. 594, §9, is further amended to read:

(3). The following definitions in other Articles apply to this Article:

"Acceptance."	Section 3-1409.
"Alteration."	Section 3-1407.
"Cashier's check."	Section 3-1104.
"Certificate of deposit."	Section 3-1104.
"Certified Check."	Section 3-1409.
"Check."	Section 3-1104.
"Demand draft."	Section 3-1104.
"Draft."	Section 3-1104.
"Good faith."	Section 3-1103.
"Holder in due course."	Section 3-1102.
"Instrument."	Section 3-1104.
"Notice of dishonor."	Section 3-1503.
"Order."	Section 3-1103.
"Ordinary care."	Section 3-1103.
"Person entitled to enforce."	Section 3-1301.
"Presentment."	Section 3-1501.
"Promise."	Section 3-1103.
"Prove."	Section 3-1103.
"Teller's check."	Section 3-1104.
"Unauthorized signature."	Section 3-1403.

Sec. B-17. 11 MRSA §4-1105, sub-§(1), ¶(e), as enacted by PL 1991, c. 812, §2, is amended to read:

(e). "Funds transfer system" means a wire transfer network, automated clearing house or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed; and

Sec. B-18. 11 MRSA §4-1105, sub-§(1), ¶(f), as enacted by PL 1991, c. 812, §2, is repealed.

Sec. B-19. 11 MRSA §4-1105, sub-§(1), ¶(g), as enacted by PL 1991, c. 812, §2, is amended to read:

(g). "Prove" with respect to a fact means to meet the burden of establishing the fact (section ~~1-201~~1-1201, subsection (8)).

Sec. B-20. 11 MRSA §4-1106, sub-§(1), as enacted by PL 1991, c. 812, §2, is amended to read:

(1). The time of receipt of a payment order or communication cancelling or amending a payment order is determined by the rules applicable to receipt of a notice stated in section ~~1-201~~, ~~subsection 271-1202~~. A receiving bank may fix a cut-off time or times on a funds transfer business day for the receipt

and processing of payment orders and communications cancelling or amending payment orders. Different cut-off times may apply to payment orders, cancellations or amendments, or to different categories of payment orders, cancellations or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication cancelling or amending a payment order is received after the close of a funds transfer business day or after the appropriate cut-off time on a funds transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds transfer business day.

Sec. B-21. 11 MRSA §4-1204, sub-§(2), as enacted by PL 1991, c. 812, §2, is amended to read:

(2). Reasonable time under subsection (1) may be fixed by agreement as stated in section ~~1-204~~1-1302, subsection ~~(1)(2)~~, but the obligation of a receiving bank to refund payment as stated in subsection (1) may not otherwise be varied by agreement.

Sec. B-22. 11 MRSA §5-1103, sub-§(3), as enacted by PL 1997, c. 429, Pt. A, §2 and affected by §4, is amended to read:

(3). With the exception of this subsection, subsections (1) and (4), section 5-1102, subsection (1), paragraphs (i) and (j), section 5-1106, subsection (4), and section 5-1114, subsection (4), and except to the extent prohibited in section ~~1-102, subsection (3)~~1-1302 and section 5-1117, subsection (4), the effect of this Article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this Article.

Sec. B-23. 11 MRSA §7-102, sub-§(1), ¶(e), is amended to read:

(e). "Document" means document of title as defined in the general definitions in Article 1 (section ~~1-201~~1-1201).

Sec. B-24. 11 MRSA §8-1102, sub-§(1), ¶(j), as enacted by PL 1997, c. 429, Pt. B, §2, is repealed.

Sec. B-25. 11 MRSA §9-1102, sub-§(43), as enacted by PL 1999, c. 699, Pt. A, §2 and affected by §4, is repealed.

Sec. B-26. 17-A MRSA §902, sub-§1, ¶A, as enacted by PL 1975, c. 499, §1, is amended to read:

A. ~~He~~The person destroys, removes, conceals, encumbers, transfers or otherwise deals with property subject to a security interest, as defined in Title 11, section ~~1-201~~1-1201, subsection ~~(37)~~(35), with the intent to hinder enforcement of that interest; or

Sec. B-27. Effective date. This Part takes effect January 1, 2010.

SUMMARY

This bill replaces Article 1 of the Uniform Commercial Code with the 2001 Revision adopted by the National Conference of Commissioners on Uniform State Laws. The bill includes amendments approved in 2003 as part of the revision of Article 7. Explanatory notes and Uniform Comments as prepared by the Uniform Law Commissioners are included.

This Act takes effect January 1, 2010.